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**IN THE COURT OF APPEALS
SECOND DISTRICT OF TEXAS
AT FORT WORTH**

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In re Texas Health Huguley, Inc., d/b/a Texas Health Huguley Hospital Ft. Worth
South; Dr. Jason A. Seiden; John Does #1-5; Jane Roes #1-5,
Relators

Cause No. 323-117290-21
323rd Family District Court of Tarrant County, Texas
Honorable Alex Kim, Presiding Judge

PETITION FOR WRIT OF MANDAMUS

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ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to Texas Rule of Appellate Procedure 52.3(a), Relators/Defendants provide the following list of the parties and the parties' counsel's names and addresses:

Respondent is the Honorable Judge Alex Kim, 323rd Judicial District Court, Tarrant County, Texas.

- Relators/Defendants are Texas Health Huguley, Inc. d/b/a Texas Health Huguley Hospital Fort Worth South; Jason Seiden, M.D.; John Does #1-5; Jane Roes #1-5.
- Counsel for Relators/Defendants are Joshua D. Ross, Scharli S. Branch, and Mary Barkley, Cantey Hanger LLP, 600 W. 6th Street, Suite 300, Fort Worth, Texas 76102.
- Real Parties in Interest/Plaintiff are Erin Jones, Individually and as Legal Representative of Next Friend Jason Jones.
- Counsel for Real Parties in Interest/Plaintiff is Jerri Lynn Ward, Garlo Ward, P.C., 1510 Texas Avenue South, College Station, Texas 77840

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INTRODUCTION

Relators submit this Petition for Writ of Mandamus as a result of the 323rd District Court’s October 26, 2021, 7:54 a.m. entry of an *ex parte* TRO compelling Relators—medical providers—to administer a medication which is not FDA approved, based on a cause of action that does not exist and which TRO was signed before the petition seeking said legal relief was filed with the Tarrant County District Clerk. Ex. 1. Specifically, the TRO requires Relators to administer the drug Ivermectin to Jason Jones (“Mr. Jones” or “patient”), a severely-ill hospitalized patient receiving care for COVID-19 at Texas Health Huguley. The TRO is void because (1) Real Parties never stated a valid cause of action, (2) Real Parties failed to demonstrate a probable right to recovery on that cause of action, (3) it is based on nothing more than conjecture from an unqualified and non-credentialed physician who had never seen nor examined the patient, (4) it was procured through bypassing the Tarrant County District Clerk’s procedures, (5) it impermissibly substitutes the Court’s judgment over Relators’ medical judgment, and (6) Real Parties failed to comply with the bond requirements of the TRO prior to issuance and service on Relators. Accordingly, this Court should grant this Petition, issue mandamus, and declare the TRO void ab initio.

STATEMENT OF THE CASE

Real Parties filed their Petition for Emergency Medical Declaratory Judgment and Emergency Injunctive Relief, which was marked as filed in the 323rd District Court on October 26, 2021 at 4:40 p.m. Ex. 2. Real Parties sought only declaratory and injunctive relief to compel the administration of Ivermectin by Relators. Real Parties' Application for Temporary Restraining Order and Injunction was hand-filed on October 26, 2021 at 7:55 a.m. and file-marked with the Tarrant County District Clerk at 12:14 p.m. that same day. Ex. 3. The 323rd Family District Court issued an Order Granting Plaintiff's Application for Temporary Restraining Order at 7:54 a.m. on October 26, 2021 (the "TRO"). Ex. 1.

Relators filed a motion to dissolve on October 28, 2021 at 9:03 a.m. Ex. 4. Respondent has not set the motion for a hearing. Respondent has now transferred this case, but the temporary restraining order remains in effect. Ex. 5. Relators ask this Court to issue a writ of mandamus to declare the TRO void ab initio.

STATEMENT OF JURISDICTION

This Court has jurisdiction to issue a writ of mandamus. Tex. Const. Art. V., § 6; Tex. Gov't. Code § 22.221(b); Tex. R. App. P. 52.

ISSUE PRESENTED

Is the October 26, 2021 Order forcing Relators to administer Ivermectin to Mr. Jones void?

STATEMENT OF FACTS

On September 28, 2021, Mr. Jones was admitted to Texas Health Huguley with previously diagnosed COVID-19. Ex. 2. His condition deteriorated and at present is sedated on and ventilator support. *Id.* His prognosis is poor. *Id.*

Mr. Jones' spouse, Real Party in Interest Erin Jones, alleged that Relators exhausted the treatment protocol for Mr. Jones, and that after conducting her own research sought the medical advice of Mary Talley Bowden, M.D., a Houston, Texas otolaryngologist who is not a credentialed member of the Texas Health Huguley medical staff. Ex. 2, 4. Dr. Bowden prescribed Ivermectin, among other medications, to Mr. Jones on October 22, 2021. Ex. 3. Real Party has requested that Relators administer Ivermectin in accordance with Dr. Bowden's "prescription." Ex. 2, 3. Relators have declined to do so. Ex. 4.

On October 26, 2021, Real Parties filed the present lawsuit. Ex. 2, 3. The case was filed in the 323rd Judicial District Court of Tarrant County, Texas, which is a statutorily authorized family court that is designated only for child welfare and juvenile delinquency cases. Ex. 6. In her Petition for Emergency Medical Declaratory Judgment and Emergency Injunctive Relief ("Petition"), Real Party in Interest alleged as follows:

Based on the facts and the law, Mrs. Jones is entitled to a declaratory judgment from this Court, declaring and enforcing her authority as Wife

of Mr. Jones and Dr. Bowden's Order and prescription to administer Ivermectin to Mr. Jones.

Mrs. Jones respectfully requests that this Court enter an order declaring that Defendants comply with (1) her reasonable requests as Mr. Jones's Wife; and (2) Dr. Bowden's order and prescription to administer Ivermectin to their mutual patient, Mr. Jones. Ex. 2.

Real Party also asserts, without any legal authority, that:

Defendants have without justification breached their express and/or implied contract with Plaintiff and Mr. Jones in failing to provide proper medical care and have breached their collective obligation and oath to "do no harm" as it relates to Defendants' unjustified refusal to administer medical and pharmaceutical therapy to Mr. Jones in an effort to save his life which has been ordered by Dr. Bowden.

Defendants have violated Texas and Federal Law by denying Mr. Jones his legal right to make rational treatment decisions and choices, individually and through his Wife, Mrs. Jones. Defendants have further unlawfully ignored instructions clearly expressed by the Plaintiff, Mr. Jones's legally authorized representative, thereby violating his right to exercise informed consent to accept and/or decline proposed treatment. *Id.*

On October 26, 2021, the trial court issued the Order stating as follows:

ORDERED that, for a period of 14 days from the signing of this Order, under penalty of contempt, Defendants, along with their agents, servants, employees, and attorneys, and all persons in active concert or participation with any of the foregoing who receive actual notice of the injunction by personal service or otherwise, are compelled to immediately administer Jason Jones Ivermectin in accordance with the prescription attached hereto as Exhibit A as part of his medical treatment. Ex. 1.

The TRO was served on Defendants on the afternoon of October 27, 2021.

Ex. 1. Relators filed a motion to dissolve the TRO on October 28, 2021. Ex. 4. On

October 28, 2021, the trial court, sua sponte, ordered the case to be transferred to another civil district court. Ex. 5. Relators challenge the TRO despite this transfer as the TRO remains in place.

ARGUMENT

I. Standard of Review

Mandamus relief is proper when: (1) a court clearly abuses its discretion or violates a duty imposed by law; and (2) the relator lacks an adequate remedy at law. *See, e.g., Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding) (per curiam). A court clearly abuses its discretion if it “reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.” *Id.* at 839. No deference, however, is given to the court’s determination of the legal principles underlying its ruling because a court “has no ‘discretion’ in determining what the law is or applying the law to the facts.” *Id.* at 840. Thus, a court abuses its discretion if it fails to analyze or apply the law correctly. *Id.*

Mandamus is also proper, where, as here, a trial court enters a temporary restraining order that is void. *In re Cornyn*, 27 S.W.3d 327, 332-33 (Tex. 2000). A TRO entered by a court without jurisdiction is a fundamental error and renders the TRO void. *Pirtle v. Gregory*, 629 S.W.2d 919, 920 (Tex.1982).

II. The October 26, 2021 TRO is void.

A TRO is void if it does not comply with Texas Rules of Civil Procedure 683 and 684. “Every temporary restraining order granted without notice . . . shall define the injury and state why it is irreparable and why the order was granted without notice” Tex. R. Civ. P. 680. “Orders that fail to fulfill these requirements are void.” *In re Office of the Atty. Gen.*, 257 S.W.3d 695, 697 (Tex. 2008); *see also In re McCoy*, 52 S.W.3d 297, 299 (Tex. App.—Corpus Christi 2001, no pet.) (holding mandamus is the appropriate remedy when a trial court enters a void order). In addition, prior to the issuance of a temporary restraining order the applicant “shall execute and file with the clerk a bond to the adverse party.” Tex. R. Civ. P. 684. The bond must be in an amount that has some relation to the potential harm the respondent could suffer as a result of the injunction. *Franklin Sav. Ass’n v. Reese*, 756 S.W.2d 14, 16 (Tex. App.-Austin 1988, no writ).

A. Real Parties have failed to identify a valid cause of action or a probable right to relief on that claim.

To prevail on a request for injunctive relief, a plaintiff must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Here, Real Parties seek a declaratory judgment that gives the wife a legal right to dictate treatment determinations for her husband and requires Relators to administer a

medication purportedly prescribed by a non-credentialed and wholly unqualified provider. Ex. 2.

A trial court only has jurisdiction over a declaratory judgment claim if it is a claim for which the Uniform Declaratory Judgments Act applies. Tex. Civ. Prac. & Rem. Code § 37.002, 37.003. Under the Uniform Declaratory Judgments Act, Chapter 37 of the Texas Civil Practice and Remedies Code, the only subject matter for relief permitted is that of “[a] person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise.” Tex. Civ. Prac. & Rem. Code § 37.004(a). Such persons may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder. *Id.*

In this case, Real Parties have not pleaded any *valid* interest under a deed, will, written contract, or other writing constituting a contract, nor have they pleaded that their rights are affected by any statute, municipal ordinance, contract, or franchise. Instead, Real Parties seek a declaration determining the rights of the parties under a nebulously-referenced “Patient/Physician contract” and the “hypocritic [sic] Oath.”

Real Parties do not articulate or identify what is meant by a “Patient/Physician contract.” Real Parties did not present any contract to the trial court for examination or inspection; there are no allegations about the terms of this phantom “contract,” nor is there any information in Real Parties’ Petition or Application from which the trial court could decipher what rights any party has or does not have that can be declared. Real Parties did not present any competent evidence that declining to administer Ivermectin to Mr. Jones constitutes a violation or breach of the “Patient/Physician contract.” The pleading is unequivocally defective and fails to provide adequate grounds for the trial court’s jurisdiction.

Real Parties also seek declaratory relief as to the “authority” as the “Wife” of Mr. Jones. There is no subject matter of relief available under the Uniform Declaratory Judgments Act for relief based upon the mere spousal relationship. Arguably, Real Parties are referencing the legal authority of the wife to act as medical power of attorney for her husband, and thus her requests related to his care should be honored by his health care providers. Even this ground falls short of providing the trial court jurisdiction. Real Parties failed to cite to any authority recognizing a patient’s (or the patient’s agent’s) legal right to force a physician or health care provider to comply with the patient’s treatment request even if the physician or health care provider believes such treatment is not medically indicated.

Real Parties also conclusively assert that “Defendants have violated Texas and federal law by denying Mr. Jones his legal right to make rational treatment decisions and choices.” Ex. 2. Real Parties cite no authority to assert priority over Relators’ legal and countervailing rights to make treatment decisions based upon the exercise of their own reasonable and prudent medical judgment. In other words, even if Mr. Jones had a legal right to take Ivermectin, there is no authority, nor could Real Parties ever cite to any, that such a “right” compels a physician or health care provider to administer it to him.

Real Parties further allege that Relators have violated her “right to exercise informed consent to accept and/or decline proposed treatment.” Ex. 2. Not only is this not a proper subject matter for declaratory relief, but Real Parties’ reliance on informed consent as a concept is misplaced and makes no logical sense. Mr. Jones cannot, by definition, exercise informed consent for a medication that he is not being administered. Informed consent relates to a patient’s rights to know the risks and hazards of certain care and treatment before the care and treatment takes place. It does not give patients the legal right to demand care and treatment from a physician or substitute their own judgment for that of a physician or health care provider.

There is simply no cause of action, declaratory or otherwise, against health care providers for failure to administer a medication that is not clinically indicated

and outside of the standard of care. Because Real Parties assert no valid cause of action, there cannot be a probable right to relief. Accordingly, the TRO is void.

B. Courts Reject Attempts to Override the Exercise of Medical Judgment by Health Care Providers.

Here, rather than preserving the status quo, the trial court has issued an order granting mandatory injunctive relief, *i.e.* affirmative action which contravenes the status quo. The trial court has ordered Relators to administer a medication that is currently not prescribed by any licensed physician that is credentialed by Texas Health Huguley, and which is inconsistent with not only the patient's physicians' orders but also the standard of care. Ex. 1, 4. As such, the Court's order requires the surrender of the patient's physicians' clinical judgment to that of another physician that is not credentialed by the hospital and, by definition, has not adequately examined the patient, as well as to the judgment of the trial court, which is not a licensed physician with any legal authority to dictate a patient's plan of care.

Texas courts have recognized that mandatory injunctions are tenuous when what is interfered with is the independent medical judgment of health care providers. Courts have "disavowed any attempt to second-guess the propriety or adequacy of a particular course of treatment" because it is "a question of sound professional judgment." *Muniz v. Texas Dep't of Crim. Just.*, No. 13-06-366-CV 2008 WL 2764518 at *3 (Tex.App.—Corpus Christi Jul. 17, 2008, no pet.) (rejecting request

for preliminary injunction ordering defendants to provide patient operation—
“Courts should not intervene upon allegations of mere negligence, mistake, or
difference of opinion”). Federal courts have also held that “judges are not ‘better
qualified than appropriate professionals’ to make decisions relating to the physical
and mental health of patients and that, to the extent possible, ‘interference by the
federal judiciary with the internal operations of...institutions...should be
“minimized.” *Costa v. Bazron*, 464 F.Supp. 3d 132, 141 (D.D.C. 2020) (quoting
Youngberg v. Romeo, 457 U.S. 307, 322-23 (1982)) (“[W]e emphasize that courts
must show deference to the judgment exercised by a qualified professional”—
“[T]here certainly is no reason to think that judges or juries are better qualified than
appropriate professionals in making such decisions.”); *Bowring v. Godwin*, 551 F.2d
44, 48 (4th Cir. 1977) (“[W]e disavow any attempt to second-guess the propriety or
adequacy of a particular course of treatment. Along with other aspects of health
care, this remains a question of sound professional judgment. The courts will not
intervene upon allegations of mere negligence, mistake or difference of opinion.”).

Here, the trial court has failed to give proper deference to the independent,
professional, and clinical judgment of the patient’s health care providers, and has
equally failed to give the same deference to the exercise of medical judgment that
previous federal and state courts have given. Relators have exercised clinical
judgment, including with respect to the patient’s plan of care, but the trial court has

abused its discretion by ordering them to administer a certain medication despite any legal authority or evidence to support the trial court's decision.

C. There is No Competent Evidence to Support the Trial Court's Substitution of its "Medical" Judgment for the Physician Relators' Medical Judgment.

Real Parties assert that "Jason has been prescribed Ivermectin," and a copy of the purported prescription is attached to the Application as Exhibit "1." Ex. 3. The "Prescription Form" purports to have originated from Mary Talley Bowden, M.D. of BreatheMD in Houston, Texas. According to Dr. Bowden's public profile available through the Texas Medical Board, she is an otolaryngologist (a/k/a ear, nose, and throat) and specializes in sleep medicine. Ex. 4. Dr. Bowden is not a credentialed member of the Texas Health Huguley medical staff. *Id.*

A host of evidentiary deficiencies are readily apparent. First, there is no competent evidentiary support for the purported prescription of Ivermectin to Mr. Jones. There is no affidavit from Dr. Bowden that sets forth her qualifications to provide COVID-related care to Mr. Jones, much less any support for how an otolaryngologist would be qualified to be involved in the acute care of a severely-ill hospitalized, sedated and ventilated COVID patient. Further, there is no information related to how Mr. Jones came to be in Dr. Bowden's care, when or how she examined him such that she could be in any position to make an assessment and plan of care, issue diagnostic orders, or prescribe medications. Of note, the "prescription

form” is dated October 22, 2021. Ex. 3. Mr. Jones has been in-patient at Texas Health Huguley since September 28, 2021. There is not a single medical record attached to Real Parties’ pleadings that would provide the Court a shred of assurance that the “care” rendered to the patient by Dr. Bowden (if any) was reasonable, prudent, and consistent with the standard of care. In fact, Real Parties state (correctly) numerous times in the Application that Ivermectin is not approved by the Food and Drug Administration to be dispensed in the manner required by the TRO.

Real Parties’ Application is without even a scintilla of *competent* evidence upon which her verified facts are based. Without such, Real Parties cannot show a “probable right to the relief sought,” and therefore are not entitled to the extraordinary remedy of mandatory injunctive relief.

An affidavit filed with an application for injunctive relief does not constitute evidence supporting the issuance of a temporary injunction. *Shor v. Pelican Oil & Gas Mgmt.*, LLC, 405 S.W.3d 737, n. 3 (Tex. App.—Houston [1st Dist.] 2013, no pet.). In this case, Real Parties failed to submit as much as a medical provider’s affidavit. The sole medical support was an unverified, unauthenticated “Prescription Form” from an unqualified and non-credentialed physician. Ex. 3. A TRO based on incompetent evidence is void. *Hall v. BAC Home Loan Servicing, L.P.*, 541 F. App’x 430, 432-33 (5th Cir. 2013), Tex. R. Civ. P. 680.

D. The TRO Fails to Satisfy the Requirements for Injunctive Relief Under Texas Law.

Texas Rule of Civil Procedure 683 requires that a temporary restraining order “set forth the reasons for its issuance” and “be specific in terms.” Tex. R. Civ. P. 683. Texas courts routinely find that compliance with Rule 683 requires specific reasons for the issuance of an order, not mere conclusory statements. *See Kotz v. Imperial Capital Bank*, 319 S.W.3d 54, 56-57 (Tex. App.—San Antonio 2010, no pet.) (“Merely stating that ‘irreparable injury will result’ if injunctive relief is not granted does not comply with the specificity requirements of Rule 683”); *Indep. Capital Mgmt., L.L.C. v. Collins*, 261 S.W.3d 792 (Tex. App.—Dallas 2008, no pet.) (injunction order simply setting out elements necessary for relief was conclusory and void); *AutoNation, Inc. v. Hatfield*, 186 S.W.3d 576, 581 (Tex. App.—Houston [14th Dist.] 2005, no pet.) (mere recital of irreparable harm does not meet specificity requirement). In this case, the trial court’s order makes only the following conclusory statement:

“[I]t clearly appears from the specific facts shown in the Application, which is verified, that immediate and irreparable injury will result to Plaintiff before notice can be served and a hearing had thereon; (11) the injury sought to be avoided includes death, which is irreparable by definition.”

In addition, the Order does not adequately identify the persons to be restrained or, in this case, required to do some act. Instead, the Court has ordered literally everyone employed by the hospital, including, expressly or ostensibly, its attorneys,

non-health care personnel like administrative employees, janitorial employees, information technology employees, etc., who are not health care providers, to walk straight to Mr. Jones' hospital room, ground up Ivermectin tablets, and shove them through his feeding tube. In addition, the Order compels five John Does and five Jane Roes to do the same, with no articulation about who they are, how they are employed, if at all, or what legal authority they have to participate in the provision of health care. Ex. 1.

Each of these defects renders the trial court's order null and void as a matter of law. The Texas Supreme Court has held that "[t]he requirements of Rule 683 are mandatory and must be strictly followed," and that when an order "does not adhere to the requirements of Rule 683 the injunction order is subject to being declared void and dissolved." *InterFirst Bank San Felipe, N.A. v. Paz Const. Co.*, 715 S.W.2d 640, 641 (Tex. 1986) (per curium) (ordering injunction order void where order did not set matter for trial on the merits in accordance with Rule 683); *see also In re Luther*, 620 S.W. 3d 715, 722 (Tex. 2021) ("A temporary restraining order that does not strictly comply with the mandates of Rule 683 is subject to being declared void and dissolved.")

In addition, Texas Rule of Civil Procedure 684 states that "[b]efore the issuance of the temporary restraining order...the applicant shall execute and file with the clerk a bond to the adverse party." There is no proof that such requirement

was met. The Failure to post a bond is yet another fatal flaw rendering the TRO void.

E. Real Parties Side-Stepped the Texas Rules of Civil Procedure and Tarrant County Local Rules.

Tarrant County Local Rule 3.30(a) states that “[n]o application for action for relief of any kind shall be presented to a judge until the application or case has been filed with the clerk and assigned to a court, unless it is impossible to do so.” In this case the TRO was signed at 7:54 a.m. on October 26, 2021. Ex. 1. Real Parties’ Application was file-marked by the Tarrant County District Clerk’s Office at 12:14 p.m. the same day. A handwritten note above the file mark indicates that the Application was “Hand Filed with Court on 10/26/21 @ 7:55 a.m.,” one minute *after* the Order was granted. As such, the TRO was signed before the Court was even in session and before the Application was filed.

Tarrant County Local Rule 1.03(a) states that “cases will be filed by random selection in courts designated for the subject matter of the litigation.” Pleadings, even *ex parte* requests for immediate relief, are to be submitted to the clerk, who then creates a new file and randomly assigns the case to a district judge. *Id.* These rules of random assignment are specifically intended and designed to prevent forum-shopping, either by litigants or politically-motivated attorneys or judges. It is readily apparent that the system was circumvented in this case. As deduced from the

available evidence, Real Parties' Application was never submitted to the Tarrant County District Clerk's Office in order to be randomly assigned to a district judge. First, the 323rd Judicial District Court is the only district court in Tarrant County that does not use an electronic filing system—explaining the hand-stamped file mark. Such would appear on the documents if, and only if, they were “filed” in the 323rd.

Mandamus should issue in this case due to the abject failures to follow the most basic procedural and due process requirements.

III. Mandamus Relief is Proper because Relators Lack an Adequate Remedy by Appeal.

Texas courts have consistently held that a party may seek mandamus review of an order when, as shown above, the order is void. *See e.g., In re Dickason*, 987 S.W.2d 570, 571 (Tex. 1998) (orig. proceeding) (per curiam); *Dikeman v. Snell*, 490 S.W.2d 183, 186 (Tex. 1973) (orig. proceeding); *Buttery v. Betts*, 422 S.W.2d 149, 151 (Tex. 1967) (orig. proceeding). And more specifically, Texas courts have held that a party may seek mandamus review of a temporary restraining order when, as shown above, it fails to comply with the requirements for such an order under Texas law. *See, e.g., In re Office of the Attorney General*, 257 S.W.3d 695, 698 (Tex. 2008) (orig. proceeding) (per curiam). Relators also lack an adequate remedy by appeal because if the trial court's order is allowed to stand and Relators are compelled to

administer Ivermectin to Mr. Jones, that act cannot be undone following an appeal after a final judgment.

IV. CONCLUSION

For the reasons stated above, Relators respectfully request that this Court (1) grant Relators/Defendants' Petition for Writ of Mandamus, (2) vacate the trial court's October 26, 2021 Order, and (3) award Relators all other relief to which they are entitled.

Respectfully submitted,

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Cantey Hanger Plaza
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Fort Worth, Texas 76102
(817) 877-2800 Telephone
(817) 877-2807 Facsimile

ATTORNEYS FOR RELATORS

CERTIFICATE OF CONFERENCE

A conference has been held with counsel for Real Party and Real Party is opposed the relief sought by Relator.

/s/ Joshua D. Ross
Cantey Hanger LLP

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4, I certify that this Petition, in relevant part, does not exceed **4223** words. This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text, except for footnotes, which are in 12-point typeface.

/s/ Joshua D. Ross
Cantey Hanger LLP

CERTIFICATION

Pursuant to TEX. R. APP. P. 52.3(j), I certify that I have read this Petition and have concluded that every factual statement in the Petition is supported by competent evidence included in the appendix or record.

/s/ Joshua D. Ross
Cantey Hanger LLP

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of Relator's Petition for Writ of Mandamus and Record has been served upon all counsel of record as noted on this the 29th day of October 2021, by efile:

/s/ Joshua D. Ross
Cantey Hanger LLP

VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

Before me, the undersigned Notary Public, on this day, personally appeared Joshua D. Ross, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said the following:

“My name is Joshua D. Ross and I am capable of making this affidavit, and the facts in this affidavit are true to my personal knowledge.

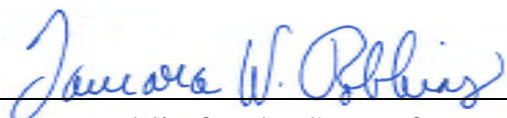
“I am one of the attorneys of record for Relator. A true and correct copy of the Order Granting Plaintiff’s Application for Temporary Restraining Order is attached hereto as Exhibit 1. A true and correct copy of the Petition for Emergency Medical Declaratory Judgment and Emergency Injunctive Relief is attached hereto as Exhibit 2. A true and correct copy of Plaintiff’s Application for Temporary Restraining Order and Injunction is attached hereto as Exhibit 3. A true and correct copy of Defendant’s Motion to Dissolve Temporary Restraining Order is attached hereto as Exhibit 4. A true and correct copy of the Order to Transfer Case is attached hereto as Exhibit 5. A true and correct copy of the Local Rules of Court, Tarrant

County, Texas is attached hereto as Exhibit 6. As of the date and time this petition was filed, the District Clerk's file did not contain proof of filing of the bond set forth in the TRO."



Joshua D. Ross

SUBSCRIBED AND SWORN TO BEFORE ME by Joshua D. Ross on
October 29, 2021



Notary Public for the State of Texas

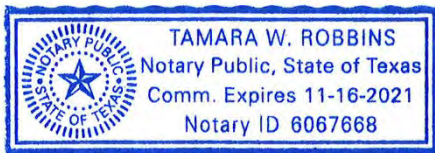


EXHIBIT 1

Hand Filed w/
Court on
10/26/2021
@ 7:55 a.m.
(10)

CAUSE NO. 323 - 117290 - 21

ERIN JONES, INDIVIDUALLY AND AS
LEGAL REPRESENTATIVE AND
NEXT FRIEND OF JASON JONES
v.

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§
§
§

____ JUDICIAL DISTRICT

TEXAS HEALTH HUGULEY HOSPITAL, FT.
WORTH, SOUTH
DR. JASON A. SIEDEN
JOHN DOES #1-5, JANE ROES #1-5
DEFENDANTS.

§
§

TARRANT COUNTY, TEXAS

THOMAS A. WILDER
DISTRICT CLERK

2021 OCT 26 PM 12:14

FILED
TARRANT COUNTY

ORDER GRANTING PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER

ON THIS DAY came on to be considered the Application for Temporary Restraining Order and Injunction (the "Application") filed by ("Plaintiff") on an *ex parte* and emergency basis. After considering the Application, which is verified, including the Exhibit A attached thereto, and the argument of counsel, the Court has resolved to render this Order. It is therefore

FOUND that there is some evidence to support each of the following findings of fact: (1) Dr. Jason A. Sieden, Texas Health Huguley Hospital, Ft. Worth South and its doctors, nurses, and other medical professionals, John Does #1-5 (collectively, the "Does") and Jane Roes #1-5 (collectively, the "Roes") (collectively, "Defendants") have refused to treat Plaintiff Jason Jones with the drug known as Ivermectin; (2) Plaintiff was admitted as a patient to Texas Health Huguley Hospital, Ft. Worth South, owned and operated by Texas Health Resources and AdventHealth., Jason Jones was diagnosed with COVID-19; (3) Dr Sieden and the Does and Roes are the medical professionals that have rendered and continue to render medical treatment to Plaintiff while he has been hospitalized at Texas Huguley Hospital, Ft. Worth South;

(4) Plaintiff has not responded well to his current medical treatment and his condition has deteriorated substantially to the point where Plaintiff is at medically substantial risk of death; (5)

Plaintiff has been prescribed Ivermectin, and a true and correct copy of this

prescription is attached hereto as Exhibit 1; (6) notwithstanding, Defendants have refused to treat Plaintiff with the drug commonly known as Ivermectin because, upon information and belief, Ivermectin has not yet received official approval of regulatory agencies for the treatment of COVID-19; (7) Defendants have declined to do so because, upon information and belief, Defendants are concerned with their potential liability for treatment of Plaintiff with Ivermectin for COVID-19 in the absence of official approval of regulatory agencies for the treatment of COVID-19; (8) considering his deteriorating condition, Plaintiff desires for Defendants to treat him with Ivermectin, notwithstanding the current absence of official approval of regulatory agencies for the treatment of COVID-19; (9) Plaintiff, Erin Jones, as legal representative and next Friend of Jason Jones, stipulates that she shall release Defendants, and any and all other persons, from any and all liability for any damages and injuries, up to and including death, that may be proximately caused by the administration of his treatment with Ivermectin in accordance with his prescription that is attached hereto as Exhibit A (1) ;it clearly appears from the specific facts shown in the Application, which is verified, that immediate and irreparable injury will result to Plaintiff before notice can be served and a hearing had thereon; (11) the injury sought to be avoided includes death, which is irreparable by definition; and (12) the Application is being granted without notice to Defendants because death could potentially result if the granting of the Application is delayed to allow notice to Defendants. It is further

ORDERED that the Application is **GRANTED**. It is further

ORDERED that, for a period of 14 days from the signing of this Order, under penalty of contempt, Defendants, along with their agents, servants, employees, and attorneys, and all persons in active concert or participation with any of the foregoing who receive actual notice of the injunction by personal service or otherwise, are compelled to immediately administer Jason

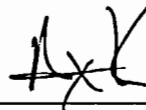
Jones Ivermectin in accordance with the prescription attached hereto as Exhibit A as part of his medical treatment. It is further

4 25th (AW)

ORDERED that Plaintiff shall post a bond in the amount of \$1.00, which Plaintiff can pay at the time Plaintiff files the petition for this cause and/or the application with the Clerk of the Court and/or other instrument through the Texas e-File system. It is further

ORDERED that a hearing on a temporary injunction for this temporary restraining order shall be held at 4 o'clock p.m. on the 8th day of November, 2021, in the courtroom for the 323rd Judicial District Court in Tarrant County, Texas, unless notice is given before this date and time that this matter will be heard elsewhere.

RENDERED and SIGNED at 7⁵⁴ o'clock ^{am} ~~p.m.~~ on this 25th day of October, 2021. 26th (P)



The Hon. Alex Kim, Judge Presiding

APPROVED AS TO FORM & SUBSTANCE

Jerri Lynn Ward, J.D.

Attorney for Plaintiffs



BreatheMD
OPTIMAL AIRWAY HEALTH

Prescription Form

Date: 10/22/21. Patient: Jason Jones DOB 12/4/1972

Ivermectin 3mg. Give 21 tablets per NGT qD, Dispense 210 tablets, Refill:2

Calcitriol 0.25mcg per NGT QD, Dispense: #30, Refill:2

Melatonin 12mg per NGT QHS, Dispense: #30, Refill:2

Fluvoxamine 50mg per NGT BID, Dispense #60, Refill:2

Cyproheptadine 8mg per NGT TID, Dispense #90, Refill:2

Zinc 100mg per NGT QD, Dispense #30, Refill: 2

Famotidine 80mg per NGT BID, Dispense #60, Refill 2

Atorvastatin 80mg per NGT QD, Dispense #30, Refill 2

Flutamide 250mg per NGT TID, Dispense #90, Refill 2

Spirolactone 100mg per NGT BID, Dispense #60, Refill 2

Finasteride 10mg per NGT QD, Dispense #30, Refill 2

Nitazoxanide 500mg per NGT BID, Dispense #60, Refill 2

IV Infusions Recommended:

- Methylprednisolone 80mg IV bolus then 40mg IV BID
- Vitamin C 25mg IV BID x 3 days
- Thiamine 200mg IV BID
- Therapeutic Plasma Exchange

Prescriber:
Mary Talley Bowden, MD
Tx license: K9770
NPI: 1699858282

3600 Kirby Dr. Suite F
Houston, TX 77098
713-492-2340

713-206-8988 (ccu)
Appendix to Petition for Writ of Mandamus

EXHIBIT 2

CAUSE NO: 323-117290-21

FILED
TARRANT COUNTY

2021 OCT 26 PM 4:40

THOMAS A. WILDER
DISTRICT CLERK

ERIN JONES, INDIVIDUALLY AND AS
LEGAL REPRESENTATIVE AND
NEXT FRIEND OF JASON JONES

§

Plaintiff,

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§

§

v.

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IN THE DISTRICT COURT OF

§

TARRANT COUNTY, TEXAS

§

TEXAS HEALTH HUGULEY, INC.,
d/b/a TEXAS HEALTH HUGULEY
HOSPITAL FT. WORTH SOUTH;
DR. JASON A. SIEDEN;
JOHN DOES #1-5; JANE ROES #1-5;

§

§

323rd JUDICIAL DISTRICT

§

§

Defendants.

§

§

PETITION FOR EMERGENCY MEDICAL DECLARATORY JUDGMENT AND EMERGENCY INJUNCTIVE RELIEF

COMES NOW, ERIN JONES as Wife of JASON JONES, Plaintiff, by and through undersigned counsel, and files this Petition for Emergency Medical Declaratory Judgment and Emergency Injunctive Relief against Defendants, TEXAS HEALTH HUGULEY, INC., d/b/a TEXAS HEALTH HUGULEY HOSPITAL FORT WORTH SOUTH; DR. JASON A. SIEDEN; JOHN DOES #1-5; JANE ROES #1-5; and for good cause shows the Court the following.

I. INTRODUCTION

1. This is a civil action for Emergency Declaratory and Injunctive Relief brought by the Plaintiff, ERIN JONES, who is the Wife of JASON JONES; who is currently a patient in the Intensive Care Unit at TEXAS HEALTH HUGULEY HOSPITAL FORT WORTH SOUTH

(“Defendants’ Hospital”), who is diagnosed with COVID-19 and intubated.

2. The physicians caring for Mr. Jones at Defendants’ Hospital have taken a “wait and see” approach towards any further treatment of Mr. Jones. Mr. Jones’s Doctor, Mary Talley Bowden, M.D., has prescribed Ivermectin be administered to Mr. Jones in an effort to save Mr. Jones’ life. The attending doctors at Defendants’ Hospital, despite having no answers of their own, have and continue to refuse to administer Ivermectin to Mr. Jones in contravention of Dr. Bowden’s orders.

3. Mrs. Jones seeks a declaration determining the rights of the parties including that the Defendants be compelled to abide by the Patient/Physician contract and their hypocritic Oath and to “Do No Harm” by withholding treatment to Mr. Jones. Further, the Plaintiff seeks a declaration that the Defendants honor the decisions of, and instructions given by Mrs. Jones, as Wife of Mr. Jones. Further, the Plaintiff seeks an emergency order compelling the Defendants to recognize Dr. Bowden’s medical order and prescription and requiring the Defendants to administer Ivermectin to their mutual patient, Mr. Jones, and comply with Dr. Bowden’s medical orders for further prescriptions for Mr. Jones in his battle with COVID-19. Plaintiff seeks an emergency Order of Specific Performance.

4. Mrs. Jones additionally seeks an order for such other, further and different relief as the Court deems just, equitable and proper.

II. JURISDICTION AND VENUE

5. Mrs. Jones is not seeking monetary or compensatory damages as her cause of action simply relates to the enforcement of Mrs. Jones’ decisions and instruction as Wife of Mr. Jones, and Dr. Bowden’s order and prescription; this Court has subject matter jurisdiction over this matter and the parties.

6. Venue lies in Tarrant County Defendants' primary place of business is in Tarrant County, and the cause of action arose in Tarrant County.

III. PARTIES

7. The Plaintiff, Erin Jones, is a citizen of the United States of America, a resident of the State of Texas, over the age of 18, Wife of Jason Jones, and therefore has standing to bring this Complaint.

8. The Defendant Doctors are hospitalists working at Defendants' Hospital, and who are managing Mr. Jones' care and treatment.

9. The Defendant, Texas Health Huguley, Inc., d/b/a Texas Health Huguley Hospital Fort Worth South has a principal business address of 11801 South Freeway, Burleson, TX 76028 (Attn: Penny L. Johnson), and is the physical hospital where Mr. Jones is a patient in the Intensive Care Unit, diagnosed with COVID-19, breathing only with the assistance of a ventilator.

IV. STATEMENT OF FACTS

10. On September 23, 2021, Mr. Jones was diagnosed with COVID-19.

11. On September 28, 2021, Mr. Jones was taken by ambulance to Defendants' Hospital and admitted.

12. From September 28, 2021 through October 7, 2021, he was treated in accordance with the Defendants' Hospital's COVID-19 protocol, which included steroids and antibiotics.

13. On or about October 7, 2021, Mr. Jones' condition worsened to such an extent that he was transferred to Defendants' Hospital ICU, where he was sedated, intubated, and placed on a ventilator.

14. Since October 7, 2021, Mr. Jones has been on a ventilator in a medically induced

coma, continuing to decline.

15. The Defendant Hospital has exhausted its COVID-19 treatment protocol, and has no further treatment options for Mr. Jones; his situation is truly “wait and see”.

16. As a 48-year-old male placed on a ventilator, Mr. Jones’ chances of survival have dropped to less than 30%.

17. At this point, there is nothing more the Defendants can do, or will do for Mr. Jones. Defendants have exhausted their course of treatment and COVID-19 procedure in treating Mr. Jones which is unacceptable to Mrs. Jones.

18. Mrs. Jones investigated other forms of treatment for COVID-19.

19. Mrs. Jones requested, as Mr. Jones’ Wife, that Defendants administer Ivermectin pursuant to its dosage schedule.

20. Mrs. Jones offered to sign a release thereby releasing Defendants, their agents, assigns, any third parties acting on its behalf, and any doctors acting on their behalf, from any and all liability in administering the Ivermectin to Mr. Jones.

21. Despite the aforementioned, Defendants refused and are unwilling to administer the Ivermectin to Mr. Jones.

22. Mr. Jones is on death's doorstep; there is no further COVID-19 treatment protocol for Defendants to administer to Mr. Jones; Mrs. Jones does not want to see Mr. Jones die, and she is doing everything she can to give her husband a chance to live.

23. Mrs. Jones sought the medical advice of Mary Talley Bowden, M.D., with regard to Mr. Jones’ prior medical history, current medical condition, and the usage of Ivermectin in treating COVID-19 and its after effects.

24. Dr. Bowden supports the use of Ivermectin to treat Mr. Jones and has prescribed

Ivermectin to him.

25. Defendants refuse to administer and comply with Dr. Bowden's prescription.

26. Mrs. Jones seeks a declaratory judgment declaring that Defendants follow Dr. Bowden's order and prescription to administer Ivermectin to their mutual patient, Mr. Jones; and a declaration that Defendants comply with the wishes and directives of Mrs. Jones, as Wife of Mr. Jones. Mrs. Jones has no other option but to bring the instant declaratory judgment civil action.

V. CAUSE OF ACTION

As and for a Cause of Action Against Defendants, Mrs. Jones alleges as follows:

27. Repeats and realleges each and every allegation previously made as if restated herein.

28. Mrs. Jones is the Wife of Mr. Jones.

29. Mr. Jones is a patient at Texas Health Huguley Hospital Fort Worth South, with very little chance of survival.

30. Mr. Jones has been diagnosed with COVID-19 and is currently in the Intensive Care Unit at Texas Health Huguley Hospital Fort Worth South; he is only breathing with the assistance of a ventilator.

31. Despite requesting that Defendants administer Ivermectin to Mr. Jones based on her authority as Mr. Jones's Wife, and Dr. Bowden's order and prescription, Defendants have refused and are unwilling to do so.

32. Despite Mrs. Jones' offer to sign a full release, releasing and relieving Defendants from any and all liability concerning the administration of Ivermectin to Mr. Jones, Defendants have refused and are unwilling to do so.

33. Despite Defendants exhausting its COVID-19 protocol with nothing left to treat

Mr. Jones, Defendants refuse to administer Ivermectin to Mr. Jones based on upon Dr. Bowden's order and prescription.

34. As a result of Defendants' refusal to administer the Ivermectin to Mr. Jones pursuant to Dr. Bowden's order and prescription, Mr. Jones, through his Wife, Mrs. Jones, has been damaged.

35. Mrs. Jones does not have an adequate remedy at law to enforce her authority as Wife of Mr. Jones, and/or Dr. Bowden's order and prescription.

36. Plaintiff alleges that Defendants have without justification breached their express and/or implied contract with Plaintiff and Mr. Jones in failing to provide proper medical care and have breached their collective obligation and oath to "do no harm" as it relates to Defendants' unjustified refusal to administer medical and pharmaceutical therapy to Mr. Jones in an effort to save his life which has been ordered by Dr. Bowden.

37. Defendants have violated Texas and Federal Law by denying Mr. Jones his legal right to make rational treatment decisions and choices, individually and through his Wife, Mrs. Jones. Defendants have further unlawfully ignored instructions clearly expressed by the Plaintiff, Mr. Jones's legally authorized representative, thereby violating his right to exercise informed consent to accept and/or decline proposed treatment.

38. Unless such conduct is enjoined and restrained, there is a substantial likelihood that such conduct, to wit: refusal to administer Ivermectin, will continue and Mr. Jones will lose all chance to preserve his life creating irreparable loss, damage and injury for which there is no adequate remedy at law.

39. Mrs. Jones does not have an adequate remedy at law to enforce her authority as Wife of Mr. Jones and/or Dr. Bowden's order and prescription.

40. Mrs. Jones has not made any prior applications for the relief requested herein.

41. It is Mrs. Jones' belief that she has made out a cause of action for declaratory judgment.

VI. RELIEF SOUGHT

Based on the facts and the law, Mrs. Jones is entitled to a declaratory judgment from this Court, declaring and enforcing her authority as Wife of Mr. Jones and Dr. Bowden's order and prescription to administer Ivermectin to Mr. Jones.

Mrs. Jones respectfully requests that this Court enter an order declaring that Defendants comply with (1) her reasonable requests as Mr. Jones's Wife; and (2) Dr. Bowden's order and prescription to administer Ivermectin to their mutual patient, Mr. Jones.

WHEREFORE, Mrs. Jones respectfully requests that this Court Order the following:

(A) Enter a judgment in favor of Mrs. Jones on the Complaint in its entirety and against the Defendants;

(B) Pursuant to Mrs. Jones's valid authority as Wife of Mr. Jones, that the Defendants comply with Dr. Bowden's order and prescription to administer Ivermectin to their mutual patient, Mr. Jones;

(C) Award Mrs. Jones all relief allowed by law and equity, including, but not limited to, declaratory, preliminary and permanent injunctive relief; and

(D) A judgment granting Mrs. Jones such other, further and different relief that the Court deems just, equitable and proper.

Respectfully submitted,

/s/ *Jerri Lynn Ward*

Jerri Lynn Ward
1510 Texas Avenue South
College Station, TX 77840
(512) 302-1103
Email: jward@garloward.com

ATTORNEYS FOR PLAINTIFF

EXHIBIT 3

CAUSE NO. 323 117290 21

Hand filed
w/ Court on
10/26/21
@ 7:55 a.m.
(all)

ERIN JONES, INDIVIDUALLY AND AS
LEGAL REPRESENTATIVE AND
NEXT FRIEND OF JASON JONES
v.

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TEXAS HEALTH HUGULEY HOSPITAL, FT.
WORTH, SOUTH
DR. JASON A. SIEDEN
JOHN DOES #1-5, JANE ROES #1-5
DEFENDANTS.

§
§

JUDICIAL DISTRICT
THOMAS A. WILDER
DISTRICT CLERK
2021 OCT 26 PM 12:34
TARRANT COUNTY TEXAS

FILED
TARRANT COUNTY

PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER & INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Erin Jones Individually and as Next Friend of Jason Jones and files her Application for Temporary Restraining Order and Injunction on behalf of her husband, respectfully showing the Court as follows:

I. Summary

1. Jason Jones is in the hospital suffering COVID-19. Jason has not positively responded to his current treatment protocol. Texas Health Huguley Hospital, Ft. Worth South (HOSPITAL) and its doctors, nurses, and other medical professionals, Dr. Jason A. Sieden John Does #1-5 (collectively, the “Does”) and Jane Roes #1-5 (collectively, the “Roes”) have refused to treat Jason with the drug known as Ivermectin because, upon information and belief: (1) Ivermectin has not yet received official approval of regulatory agencies for the treatment of COVID-19; and (2) MMMC, the Does, and the Roes (collectively, “Defendants”) are concerned with their potential liability for treatment of Jason with Ivermectin for COVID-19 in the absence of official approval of regulatory agencies for the treatment of COVID-19. Jason has received a

prescription for Ivermectin, which is attached hereto as Exhibit A. HOSPITAL, the Does, and the Roes are concerned with their potential liability for treatment of Jason with Ivermectin for COVID-19 in the absence of official approval of regulatory agencies for the treatment of COVID-19. Jason and his wife, Erin Jones, his legal representative and surrogate decision-maker, requests a temporary restraining order and temporary injunction ordering Defendants to administer him Ivermectin in accordance with the prescription attached hereto as Exhibit A as part of his medical treatment.

II. Facts

2. The following facts are verified.

3. Jason was admitted as a patient to HOSPITAL and diagnosed with COVID-19. The Does and Roes are the medical professionals that have rendered and continue to render medical treatment to Jason while he has been hospitalized at HOSPITAL.

4. Jason has not responded well to his current medical treatment and his condition has deteriorated substantially to the point where Jason is at medically substantial risk of death.

5. Jason has been prescribed Ivermectin. A true and correct copy of this prescription is attached hereto as Exhibit A.

6. Notwithstanding, Defendants have refused to treat Jason with the drug commonly known as Ivermectin because, upon information and belief, Ivermectin has not yet received official approval of regulatory agencies for the treatment of COVID-19. Defendants have declined to do so because, upon information and belief, Defendants are concerned with their potential liability for treatment of Jason with Ivermectin for COVID-19 in the absence of official approval of regulatory agencies for the treatment of COVID-19.

7. Considering his deteriorating condition, Jason desires for Defendants to treat him with Ivermectin, notwithstanding the current absence of official approval of regulatory agencies for the treatment of COVID-19. Erin Jones stipulates, as Jason's legal representative that she shall release Defendants, and any and all other persons, from any and all liability for any damages and injuries, up to and including death, that may be proximately caused by the administration of the treatment of Jason with Ivermectin in accordance with his prescription that is attached hereto as Exhibit 1

III. Arguments & Authorities

8. To obtain a temporary injunction, an applicant must plead and prove: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Id.* To establish a probable right to relief, a party is not required to prove that it will prevail at a final trial. *Id.* Rather, a probable right of recovery is shown by alleging a cause of action and presenting some evidence tending to sustain it. *Id.*

9. The potential loss of life is an obviously irreparable injury.

10. Jason's live pleading pleads viable cause of action for declaratory judgment based upon her constitutional right to life. The verified factual allegations set forth in this application present some evidence on each element of this cause of action. Therefore, Jason has satisfied the first two elements to be entitled to the relief requested.

11. The verified factual allegations set forth in this application present some evidence that Jason will suffer probable injury without the temporary injunctive relief requested. Death is irreversible.

12. The bond to secure the temporary restraining order and temporary injunction should be nominal because Defendants will suffer no damages on account of the requested

temporary restraining order. After all, Jason has stipulated to release Defendants from any liability related to the requested temporary restraining order. Therefore, Jason requests the bond be set at \$1.00.

13. The Court should enter a temporary restraining order and a temporary injunction compelling Defendants, and their respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of the foregoing who receive actual notice of the order by personal service or otherwise to immediately administer Jason Ivermectin in accordance with the prescription attached hereto as Exhibit A as part of her medical treatment.

IV. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray a temporary restraining order and temporary injunction be entered as requested herein, and the Court award Plaintiffs all such other and further relief, both general and special, at law or in equity, to which they may be entitled.

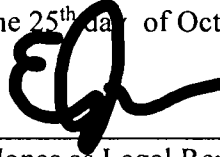
Respectfully submitted
GARLO WARD,P.C
1511 Texas Ave. South
College Station, Texas 77840
www.garloward.com
(512) 302-1103|
Telephone (512) 302-1103

By: *Jerri Lynn Ward, J.D.*
Jerri Lynn Ward
Texas State Bar No. 20844200
jward@garloward.com
ATTORNEY FOR PLAINTIFFS

VERIFICATION

My name is Erin Jones, I am over the age of 18, and my address is c/o Garlo Ward at 1511 Texas Ave, South, College Station, Texas 77840 I have personal knowledge of the factual allegations in paragraphs 1-7, and they are true and correct. I declare under penalty of perjury the foregoing is true and correct.

EXECUTED in Tarrant County, State of Texas, on the 25th day of October, 2021.



Erin Jones as Legal Representative & Next
Friend of Jason Jones

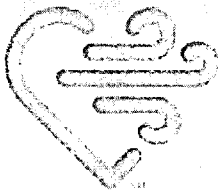
CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 3.06 and 3.30, I certify that to the best of my knowledge, Defendants are not represented by counsel in the matter made the basis of the relief sought. Therefore, a conference was not held with Defendants on the merits of this application.

Jerri Lynn Ward, J.D.
Jerri Lynn Ward, J.D.

1

EXHIBIT 1



BreatheMD
OPTIMAL AIRWAY HEALTH

Prescription Form

Date: 10/22/21. Patient: Jason Jones DOB 12/4/1972

Ivermectin 3mg. Give 21 tablets per NGT qD, Dispense 210 tablets, Refill:2

Calcitriol 0.25mcg per NGT QD, Dispense: #30, Refill:2

Melatonin 12mg per NGT QHS , Dispense: #30, Refill:2

Fluvoxamine 50mg per NGT BID, Dispense #60, Refill:2

Cyproheptadine 8mg per NGT TID, Dispense #90, Refill:2

Zinc 100mg per NGT QD, Dispense #30, Refill: 2

Famotidine 80mg per NGT BID, Dispense #60, Refill 2

Avorstatin 80mg per NGT QD, Dispense #30, Refill 2

Flutamide 250mg per NGT TID, Dispense #90, Refill 2

Spironolactone 100mg per NGT BID, Dispense #60, Refill 2

Finasteride 10mg per NGT QD, Dispense #30, Refill 2

Nitazoxanide 500mg per NGT BID, Dispense #60, Refill 2

IV Infusions Recommended:

- Methylprednisolone 80mg IV bolus then 40mg IV BID
- Vitamin C 25mg IV BID x 3 days
- Thiamine 200mg IV BID
- Therapeutic Plasma Exchange

Prescriber:

Mary Talley Bowden, MD

Tx license: K9770

NPI: 1039850202

3600 Kirby Dr. Suite F

Houston, TX 77098

713-492-2340

713-206-8988 (ccu)

Appendix to Petition for Writ of Mandamus

EXHIBIT 4

CAUSE NO. 323-117290-21

ERIN JONES, INDIVIDUALLY AND AS
LEGAL REPRESENTATIVE AND
NEXT FRIEND OF JASON JONES

Plaintiff,

v.

TEXAS HEALTH HUGULEY HOSPITAL,
FT. WORTH SOUTH, DR. JASON SIEDEN
JOHN DOES #1-5, JANE ROES #1-5

Defendants.

IN THE DISTRICT COURT

OF TARRANT COUNTY, TEXAS

323RD JUDICIAL DISTRICT

DEFENDANTS' EMERGENCY MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Texas Health Huguley, Inc. d/b/a Texas Health Huguley Hospital Fort Worth South ("Huguley Hospital"), incorrectly named in the style as Texas Health Huguley Hospital, Ft. Worth South, and Dr. Jason Seiden, Defendants in the above-styled and numbered Cause, who make and file this their Emergency Motion to Dissolve Temporary Restraining Order and would show the Court the following:

I. INTRODUCTION

On October 26, 2021, the Court granted an *ex parte* application for a temporary restraining order requiring a hospital and, for all intents and purposes, everyone working in the hospital, to administer a medication to a patient. Plaintiffs' request for relief, and the Court's errant granting of relief, is defective, null and void, and should be dissolved and rescinded *in toto*. Plaintiff has wholly failed to establish an entitlement to the extraordinary remedy of injunctive relief, as the Court has no statutory or common law jurisdiction to dictate to health care providers the particulars

of medical or health care and treatment. Appellate courts have rejected a trial court's attempt to override the medical judgment of physicians, and there is no legal authority supporting a patient's (or a patient's agent's) right to force a physician to comply with requests for care inconsistent with that physician's judgment. In addition, the underlying cause of action pleaded by Plaintiff is invalid and defective, and the evidence supporting Plaintiff's request for relief is incompetent as a matter of law.

II. FACTUAL AND PROCEDURAL BACKGROUND

Jason Jones was admitted to Huguley Hospital on September 28, 2021 with COVID. His condition deteriorated. He is sedated, ventilated, and has a poor prognosis.

Unbeknownst to the hospital or Mr. Jones' care providers, on October 26, 2021, the Court issued an Order Granting Plaintiff's Application for Temporary Restraining Order ("TRO") attached hereto as Exhibit "1." The Order was presented to medical and nursing staff at Huguley Hospital. The TRO has no cause number and appears to have been presented to the Court before court was called to session on October 26, 2021—it is handwritten on the TRO that the document was "Hand Filed at 7:55 a.m.," before the courthouse is even open. The TRO ostensibly requires Huguley Hospital and other unnamed medical and nursing staff to administer a medication to a hospitalized COVID patient purportedly prescribed by an otolaryngologist in Houston, Texas that does not have clinical privileges at Huguley Hospital. The Court's Order was served upon Defendants on October 27, 2021. This Motion timely follows.

Plaintiff's Petition for Emergency Medical Declaratory Judgment and Emergency Injunctive Relief, oddly, was filed at 4:40 p.m. (indicated by a hand-stamped file mark), over nine hours after the TRO was signed. This circumstance wreaks of manifest impropriety, as Tarrant County Local Rules require cases to be filed with the District Clerk's office and assigned to courts

randomly and “designated for the subject matter of the litigation”—the 323rd Judicial District Court is a statutorily authorized juvenile court and would not be assigned this matter had local rules been followed. It appears Plaintiff has forum-shopped this matter to a venue more likely to grant the relief requested, appeared before the Court before court was even in session, and wholly disregarded local rules and the Texas Rules of Civil Procedure.

Further, the underlying cause of action upon which Plaintiff bases her Application for a temporary restraining order is for a declaratory judgment “declaring and enforcing [Plaintiff’s] authority as Wife of Mr. Jones and Dr. Bowden’s order and prescription to administer Ivermectin to Mr. Jones.” Plaintiff has not properly stated a cause of action under the Uniform Declaratory Judgments Act; Chapter 37 of the Texas Civil Practice and Remedies Code. Without a valid cause of action and probable right to recover, the restraining order is defective on its face and the Order granting relief is void.

II. ARGUMENT AND AUTHORITY

“A temporary injunction is an extraordinary remedy and does not issue as a matter of right.” *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993) (per curiam). “A temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). “A prohibitive injunction forbids conduct, whereas a mandatory injunction requires it.” *Tri-Star Petroleum Co. v. Tipperary Corp.*, 101 S.W.3d 583, 592 (Tex.App.—El Paso 2003, pet. denied). Under Texas law, mandatory injunctive relief “is proper only if a mandatory order is necessary to prevent irreparable injury or extreme hardship.” *Id.*; see also *Rhodia, Inc. v. Harris County*, 470 S.W.2d 415, 419 (Tex.Civ.App.—Houston [1st Dist.] 1971, no writ). In this case, the Court has issued mandatory injunctive relief, requiring Defendants to administer medication not otherwise prescribed.

A. Courts Reject the Substitution of Independent Medical Judgment

Here, rather than preserving the status quo, the Court has issued an order granting, in essence, mandatory injunctive relief, *i.e.* affirmative action which contravenes the status quo. The Court has ordered Defendants to administer a medication that is currently not prescribed by any licensed physician that is credentialed by Huguley Hospital, and which is inconsistent with not only the patient's physicians but also the standard of care. As such, the Court's order requires the surrender of the patient's physicians' clinical judgment to that of another physician that is not credentialed in the hospital and, by definition, has not adequately examined the patient, as well as to the judgment of the Court, which is not a licensed physician with any legal authority to dictate a patient's plan of care.

Texas courts have recognized that mandatory injunctions are tenuous when what is interfered with is the independent medical judgment of health care providers. Courts have "disavowed any attempt to second-guess the propriety or adequacy of a particular course of treatment" because it is "a question of sound professional judgment." *Muniz v. Texas Dep't of Crim. Just.*, 2008 WL 2764518 at *3 (Tex.App.—Corpus Christi Jul. 17, 2008, no pet.) (rejecting request for preliminary injunction ordering defendants to provide patient operation—"Courts should not intervene upon allegations of mere negligence, mistake, or difference of opinion"). Federal courts have also held that "judges are not 'better qualified than appropriate professionals' to make decisions relating to the physical and mental health of patients and that, to the extent possible, 'interference by the federal judiciary with the internal operations of...institutions...should be "minimized." *Costa v. Bazron*, 464 F.Supp. 3d 132, 141 (D.D.C. 2020) (quoting *Youngberg v. Romeo*, 457 U.S. 307, 322-23 (1982)); *See also Youngberg*, 457 U.S. at 323 ("[W]e emphasize that courts must show deference to the judgment exercised by a qualified

professional”—“[T]here certainly is no reason to think that judges or juries are better qualified than appropriate professionals in making such decisions.”); *Bowring v. Godwin*, 551 F.2d 44, 48 (4th Cir. 1977) (“[W]e disavow any attempt to second-guess the propriety or adequacy of a particular course of treatment. Along with other aspects of health care, this remains a question of sound professional judgment. The courts will not intervene upon allegations of mere negligence, mistake or difference of opinion.”).

Here, the Court has failed to give proper deference to the independent, professional, and clinical judgment of the patient’s health care providers, and has equally failed to give the same deference to the exercise of medical judgment that previous federal and state courts have given. Defendants have exercised clinical judgment, including with respect to the patient’s plan of care, but the Court has abused its discretion by ordering them to administer a certain medication despite any legal authority or evidence to support the Court’s decision.

B. Plaintiff’s Evidence to Support Verified Facts is Incompetent

In Plaintiff’s Application for Temporary Restraining Order & Injunction, it is asserted that “Jason has been prescribed Ivermectin,”¹ and a copy of the purported prescription is attached to the Application as Exhibit “1.” The “Prescription Form” purports to have originated from Mary Talley Bowden, M.D. of BreatheMD in Houston, Texas. According to Dr. Bowden’s public profile available through the Texas Medical Board, she is an otolaryngologist (a/k/a ear, nose, and throat) and specializes in sleep medicine.² Dr. Bowden is not a credentialed member of the Huguley Hospital medical staff.

A host of evidentiary deficiencies are readily apparent. First, while Plaintiff’s Application is supported by Plaintiff’s verification, any evidentiary support for the purported prescription of

¹ See Plaintiff’s Application for Temporary Restraining Order & Injunction, at 2.

² See Exhibit “2.”

Ivermectin to Jason Jones is completely untethered from all concepts of competence. There is no affidavit from Dr. Bowden that sets forth her qualifications to provide COVID-related care to Mr. Jones, much less any support for how an otolaryngologist would be qualified to be involved in the acute care of a severely-ill hospitalized, sedated and ventilated COVID patient. Further, there is no information related to how Mr. Jones came to be in Dr. Bowden's care, when or how she examined him such that she could be in any position to make an assessment and plan of care, issue diagnostic orders, or prescribe medications. Of note, the "prescription form" is dated October 22, 2021. Mr. Jones has been in-patient at Huguley Hospital since September 28, 2021. There is not a single medical record attached to Plaintiff's Petition or Application that would provide the Court a shred of assurance that the "care" rendered to the patient by Dr. Bowden (if any) was reasonable, prudent, and consistent with the standard of care. In fact, Plaintiff states (correctly) numerous times in her Application that Ivermectin is not approved by the Federal Drug Administration to be dispensed in the manner required by the Court's Order.

Plaintiff's Application is without even a scintilla of competent evidence upon which her verified facts are based. Without such, Plaintiff cannot show a "probable right to the relief sought," and therefore is not entitled to the extraordinary remedy of mandatory injunctive relief. She has asked the Court to override the medical judgment of credentialed physicians and health care providers at Huguley Hospital, and substitute that judgment with the Court's judgment as to medications to be administered to a patient based upon a purported prescription from an unqualified and non-credentialed physician that has neither examined the patient nor provided the Court any assurances that she is qualified to issue any care and treatment decisions related to Mr. Jones, credentialed to care for patients at Huguley Hospital, or that she actually has prescribed Mr. Jones Ivermectin, when she examined the patient, where the records are of her encounter with the

patient, and upon what assessment and plan of care her purported prescription of Ivermectin is based. Quite frankly, that the Court would grant the relief requested on so little is shocking and disappointing.

C. Impropriety and Forum-Shopping are Readily Apparent

Tarrant County Local Rule 3.30(a) states that “[n]o application for action for relief of any kind shall be presented to a judge until the application or case has been filed with the clerk and assigned to a court, unless it is impossible to do so.” In this case the Court’s Order was signed at 7:54 a.m. on October 26, 2021. Plaintiff’s Application for Temporary Restraining Order & Injunction were file-marked by the Tarrant County District Clerk’s Office at 12:14 p.m. the same day. A handwritten note above the file mark indicates that Application was “Hand Filed with Court on 10/26/21 @ 7:55 a.m., one minute after the Order was granted. As such, the Court’s Order was submitted before the Court was even in session and before the Application was filed.

Tarrant County Local Rule 1.03(a) states that “cases will be filed by random selection in courts designated for the subject matter of the litigation.” Pleadings, even *ex parte* requests for immediate relief, are to be submitted to the clerk, who then creates a new file and randomly assigns the case to a district judge. *Id.* These rules of random assignment are specifically intended and designed to prevent forum-shopping, either by litigants or politically-motivated attorneys or judges. It is readily apparent that the system was circumvented in this case. Upon information and belief, Plaintiff’s Application was never submitted to the Tarrant County District Clerk’s Office in order to be randomly assigned to a district judge. First, the 323rd Judicial District Court is the only district court in Tarrant County that does not use an electronic filing system—explaining the hand-stamped file mark. Such would appear on the documents if, and only if, they were “filed” at the 323rd.

Secondly, and more to the point, had this matter been subject to random assignment as required by Tarrant County Local Rules, the 323rd would have been ineligible to receive the assignment, as the Court is designated as the juvenile court for Tarrant County pursuant to Texas Family Code § 51.04(b). Even the Court's own website notes that it "hears Child Welfare and Juvenile Delinquency cases,"³ which this matter is neither.

There is no other rational explanation for this matter coming before the 323rd Judicial District Court than forum-shopping and apparent political motives. The undersigned references the case styled *Tinslee Breau Lewis, a Minor and Mother, Trinity Lewis, on her Behalf v. Cook Children's Medical Center*, Cause No. 323-112330-19, and its procedural history, as evidence of the reasonable deduction that improper motives are afoot. These circumstances in and of themselves require the dissolution of the Court's Order, or at the very least the transfer of this matter to a properly assigned district court.

D. Plaintiff has not stated a Claim for Relief

To prevail on a request for injunctive relief, Plaintiff must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *Butnaru*, 84 S.W.3d at 204. Plaintiff requests a declaratory judgment that gives her a legal right to dictate treatment determinations for her husband requires Defendants to administer a medication purportedly prescribed by a non-credentialed and wholly unqualified provider.

Under the Uniform Declaratory Judgments Act, the only subject matter for relief permitted is that of "[a] person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal

³ <https://www.tarrantcounty.com/en/juvenile-courts/323rd-district-court.html>.

ordinance, contract, or franchise.” Tex. Civ. Prac. & Rem. Code § 37.004(a). Such persons may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder. *Id.* In this case, Plaintiff has not pleaded any *valid* interest under a deed, will, written contract, or other writing constituting a contract, nor has she pleaded that her rights (or those of her husband) are affected by any statute, municipal ordinance, contract, or franchise. Instead, Plaintiff alleges that she seeks a declaration determining the rights of the parties under a nebulously-referenced “Patient/Physician contract” and the “hypocritic [sic] Oath.”

Plaintiff does not articulate on her reference to a “Patient/Physician contract.” She has not presented any contract to the Court for examination or inspection; there are no allegations about the terms of this phantom “contract,” nor is there any information in Plaintiff’s Petition or Application from which the Court could decipher what rights any party has or does not have that can be declared. Plaintiff does not present any competent evidence that declining to administer Ivermectin to Mr. Jones constitutes a violation or breach of the “Patient/Physician contract,” nor does she present any evidence that declining to provide Ivermectin constitutes medically improper care. The pleading is unequivocally defective. It is as if Plaintiff, knowing that to provide the Court jurisdiction to consider her request for relief under the Uniform Declaratory Judgments Act required some contract or other writing to underlie the requested relief, included “Patient/Physician contract” merely to state magical words to avoid a plea to the jurisdiction. Such conduct violates Texas Rule of Civil Procedure 13, among other pleading rules, and is subject to sanctions.

Plaintiff also seeks declaratory relief as to her “authority” as the “Wife” of Mr. Jones. There is no subject matter of relief available under the Uniform Declaratory Judgments Act for relief based upon the mere spousal relationship. Giving Plaintiff the benefit of the doubt, perhaps

she means to state that she has the legal authority to act as medical power of attorney for her husband, and thus her requests related to his care should be honored by his health care providers. Even this ground falls short of providing the Court jurisdiction. Plaintiff has failed to cite to any authority recognizing a patient's (or the patient's agent's) legal right to force a physician or health care provider to comply with the patient's treatment request even if the physician or health care provider believes such treatment is not medically appropriate.

Plaintiff also conclusively asserts that "Defendants have violated Texas and federal law by denying Mr. Jones his legal right to make rational treatment decisions and choices."⁴ She does not, however, state what Texas and federal laws her pleadings refer to, much less point the Court to a law that gives Mr. Jones and/or his "Wife" and their supposed "legal right to make rational treatment decisions and choices" legal priority over Defendants' legal and countervailing rights to make treatment decisions based upon the exercise of their own reasonable and prudent medical judgment. In other words, even if Mr. Jones had a legal right to take Ivermectin, there is no authority, nor could Plaintiff ever cite to any, that such a "right" compels a physician or health care provider to administer it to him.

Plaintiff further alleges that Defendants have violated Plaintiff's "right to exercise informed consent to accept and/or decline proposed treatment." Not only is this not a proper subject matter for declaratory relief, but Plaintiff's reliance on informed consent as a concept is misplaced and makes no logical sense. Mr. Jones cannot, by definition, exercise informed consent for a medication that he is not being administered. Informed consent relates to a patient's rights to know the risks and hazards of certain care and treatment before the care and treatment takes

⁴ See Plaintiff's Petition, at ¶ 37.

place. It does not give patients the legal right to demand care and treatment from a physician or substitute their own judgment for that of a physician or health care provider.

At any rate, it is notable that there is no recognized, valid, cause of action against a hospital for failing to administer a drug that is outside the standard of care. *See*, for example, *DeMarco v. Christiana Care Health Servs., Inc.*, No. CV 2021-0804-MTZ, 2021 WL 4343661 (Del. Ch. Sept. 24, 2021). The Court in *Demarco* addressed essentially the same issue as in this case. That Court denied a TRO finding that “[u]nder the present standard of care, healthcare providers have no duty to administer ivermectin to a COVID-19 patient” and that refusing to administer ivermectin did not breach the physician, patient relationship. *Id.* at 9. The same is true here. There is no cause of action against the hospital for failure to administer a medication that is outside of the standard of care, a circumstance Plaintiff essentially admits in her pleadings. Because there is no valid cause of action, there cannot be a probable right to relief.

Moreover, Courts addressing this issue have found that granting injunctive relief would adversely impact:

“the safe and effective development of medications and medical practices. ... a hospital's standard of care decisions, mandating doctors and nurses to provide care they believe unnecessary, ethical concerns of all doctors involved, patient autonomy, fiduciary duty, accreditation standards for patient protections, obligating one's doctor to carry out the treatment regimen/plan of another doctor, ... and whether a court should mediate or legislate from the bench.” *Id.* at 12.

What Plaintiff seeks is anathema to the obligation of physicians and health care providers to act in their patient's best interests. “The American Medical Association itself has stated that ‘[p]hysicians are not ethically obliged to deliver care that, in their best professional judgment, will not have a reasonable chance of benefitting their patients[,] [and p]atients should not be given treatments simply because they demand them.’ Because the AMA generally recognizes that physicians have an ethical duty to exercise independent medical judgment, the question becomes

whether a doctor's fiduciary obligation legally requires the doctor 'just say no' to a demanding patient...Because of patients' limited ability to make medical decisions for themselves, however, physicians – to properly serve the best interests of their patients – must always exercise their independent medical judgment and provide access only to appropriate medical services. Thus, to satisfy their fiduciary obligation, physicians should authorize access only to those services that reflect and represent the exercise of their independent medical judgment and that are medically indicated for their patient – that is, to provide access consistent with the patient's medical needs and condition. To ensure that physicians retain their valued and valuable role in the physician-patient relationship, physicians must always exercise their independent medical judgment, even when doing so is contrary to the expressed wishes of the patient and may jeopardize the physicians financial well-being or other self-interests.” Thomas L. Hafemeister & Richard M. Gulbrandsen, Jr., *The Fiduciary Obligation of Physicians to “Just Say No” if an “Informed” Patient Demands Services That Are Not Medically Indicated*, 39 SETON HALL L. REV. 3356, 373-74 (2009).

III. CONCLUSION

For the reasons stated herein, the Court should dissolve its Order Granting Plaintiff's Application for Temporary Restraining Order. Plaintiff's Petition and Application are defective on their face, were improperly presented to the 323rd Judicial District Court, and are not based on even the slightest scintilla of competent evidence. Plaintiff has not and cannot meet her burden to obtain the relief that the Court erroneously and imprudently granted, and the Order in and of itself is one that is impossible for Defendants to comply—Defendants cannot allow their independent medical and professional judgment be superseded and overridden by the Court or a non-credentialed and unqualified provider. The Court's Order manifestly violates public policy and Texas law, and should be dissolved *in toto*.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants pray the Court immediately dissolve its Order and for all other and further relief, both general and special, at law or in equity, to which Defendants may show themselves to be justly entitled.

Respectfully submitted,

By: /s/ Joshua D. Ross
Joshua D. Ross
State Bar No. 24046760
jross@canteyhanger.com

Scharli S. Branch
State Bar No. 24103566
ssbranch@canteyhanger.com

CANTEY HANGER LLP
Cantey Hanger Plaza
600 W. 6th Street, Suite 300
Fort Worth, Texas 76102
(817) 877-2800 Telephone
(817) 877-2807 Facsimile

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on counsel for the Plaintiff on the 28th day of October, 2021 via email and facsimile

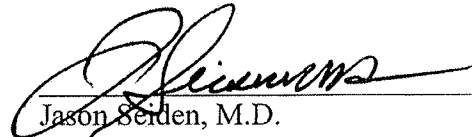
/s/Joshua D. Ross
Joshua D. Ross

VERIFICATION OF JASON SEIDEN, M.D.

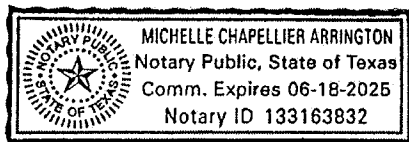
STATE OF TEXAS §
 §
COUNTY OF TARRANT §

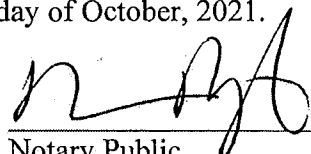
Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Jason Seiden, M.D., who after being by me first duly sworn, upon his oath deposes and says:

1. My name is Jason Seiden, M.D. I am over eighteen (18) years-of-age and I am fully competent to make this Verification. I have reviewed the factual representations made in Defendants' Emergency Motion to Dissolve Temporary Restraining Order, which incorporates this Verification, and to the best of my knowledge the factual assertions are true and correct.


Jason Seiden, M.D.

Subscribed and sworn to before me on this the 28 day of October, 2021.




Notary Public
State of Texas

Verification of Jason Seiden, M.D.

Exhibit

1

Hand Filed w/
Court on
10/26/2021
@ 7:55 a.m.
(RW)

CAUSE NO. _____

ERIN JONES, INDIVIDUALLY AND AS
LEGAL REPRESENTATIVE AND
NEXT FRIEND OF JASON JONES
V.

§
§
§
§

JUDICIAL DISTRICT

TEXAS HEALTH HUGULEY HOSPITAL, FT.
WORTH, SOUTH
DR. JASON A. SIEDEN
JOHN DOES #1-5, JANE ROES #1-5
DEFENDANTS.

§
§

TARRANT COUNTY, TEXAS

ORDER GRANTING PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER

ON THIS DAY came on to be considered the Application for Temporary Restraining Order and Injunction (the "Application") filed by ("Plaintiff") on an *ex parte* and emergency basis. After considering the Application, which is verified, including the Exhibit A attached thereto, and the argument of counsel, the Court has resolved to render this Order. It is therefore

FOUND that there is some evidence to support each of the following findings of fact: (1) Dr. Jason A. Sieden, Texas Health Huguley Hospital, Ft. Worth South and its doctors, nurses, and other medical professionals, John Does #1-5 (collectively, the "Does") and Jane Roes #1-5 (collectively, the "Roes") (collectively, "Defendants") have refused to treat Plaintiff Jason Jones with the drug known as Ivermectin; (2) Plaintiff was admitted as a patient to Texas Health Huguley Hospital, Ft. Worth South, owned and operated by Texas Health Resources and AdventHealth., Jason Jones was diagnosed with COVID-19; (3) Dr Sieden and the Does and Roes are the medical professionals that have rendered and continue to render medical treatment to Plaintiff while he has been hospitalized at Texas Huguley Hospital, Ft. Worth South;

(4) Plaintiff has not responded well to his current medical treatment and his condition has deteriorated substantially to the point where Plaintiff is at medically substantial risk of death; (5) Plaintiff has been prescribed Ivermectin, and a true and correct copy of this

Page 1 of 3

prescription is attached hereto as Exhibit 1; (6) notwithstanding, Defendants have refused to treat Plaintiff with the drug commonly known as Ivermectin because, upon information and belief, Ivermectin has not yet received official approval of regulatory agencies for the treatment of COVID-19; (7) Defendants have declined to do so because, upon information and belief, Defendants are concerned with their potential liability for treatment of Plaintiff with Ivermectin for COVID-19 in the absence of official approval of regulatory agencies for the treatment of COVID-19; (8) considering his deteriorating condition, Plaintiff desires for Defendants to treat him with Ivermectin, notwithstanding the current absence of official approval of regulatory agencies for the treatment of COVID-19; (9) Plaintiff, Erin Jones, as legal representative and next Friend of Jason Jones, stipulates that she shall release Defendants, and any and all other persons, from any and all liability for any damages and injuries, up to and including death, that may be proximately caused by the administration of his treatment with Ivermectin in accordance with his prescription that is attached hereto as Exhibit A (1) ;it clearly appears from the specific facts shown in the Application, which is verified, that immediate and irreparable injury will result to Plaintiff before notice can be served and a hearing had thereon; (11) the injury sought to be avoided includes death, which is irreparable by definition; and (12) the Application is being granted without notice to Defendants because death could potentially result if the granting of the Application is delayed to allow notice to Defendants. It is further

ORDERED that the Application is **GRANTED**. It is further


ORDERED that, for a period of 14 days from the signing of this Order, under penalty of contempt, Defendants, along with their agents, servants, employees, and attorneys, and all persons in active concert or participation with any of the foregoing who receive actual notice of the injunction by personal service or otherwise, are compelled to immediately administer Jason

Jones Ivermectin in accordance with the prescription attached hereto as Exhibit A as part of his medical treatment. It is further

ORDERED that Plaintiff shall post a bond in the amount of \$1.00, which Plaintiff can pay at the time Plaintiff files the petition for this cause and/or the application with the Clerk of the Court and/or other instrument through the Texas e-File system. It is further

ORDERED that a hearing on a temporary injunction for this temporary restraining order shall be held at 4 o'clock p.m. on the 8th day of November, 2021, in the courtroom for the 323rd Judicial District Court in Tarrant County, Texas, unless notice is given before this date and time that this matter will be heard elsewhere.

RENDERED and SIGNED at 7⁵⁴ o'clock am on this 25th day of October, 2021.


The Hon. Alex Kim, Judge Presiding

APPROVED AS TO FORM & SUBSTANCE

Jerri Lynn Ward, J.D.

Attorney for Plaintiffs



BreatheMD
OPTIMAL AIRWAY HEALTH

Prescription Form

Date: 10/22/21. Patient: Jason Jones DOB 12/4/1972

Ivermectin 3mg. Give 21 tablets per NGT qD, Dispense 210 tablets, Refill:2

Calcitriol 0.25mcg per NGT OD, Dispense: #30, Refill:2

Melatonin 12mg per NGT QHS, Dispense: #30, Refill:2

Fluvoxamine 50mg per NGT BID, Dispense #60, Refill:2

Cyproheptadine 8mg per NGT TID, Dispense #90, Refill:2

Zinc 100mg per NGT OD, Dispense #30, Refill: 2

Famotidine 80mg per NGT BID, Dispense #60, Refill 2

Atorvastatin 80mg per NGT OD, Dispense #30, Refill 2

Flutamide 250mg per NGT TID, Dispense #90, Refill 2

Spironolactone 100mg per NGT BID, Dispense #60, Refill 2

Finasteride 10mg per NGT OD, Dispense #30, Refill 2

Nitazoxanide 500mg per NGT BID, Dispense #60, Refill 2

IV Infusions Recommended:

- Methylprednisolone 80mg IV bolus then 40mg IV BID
- Vitamin C 25mg IV BID x 3 days
- Thiamine 200mg IV BID
- Therapeutic Plasma Exchange

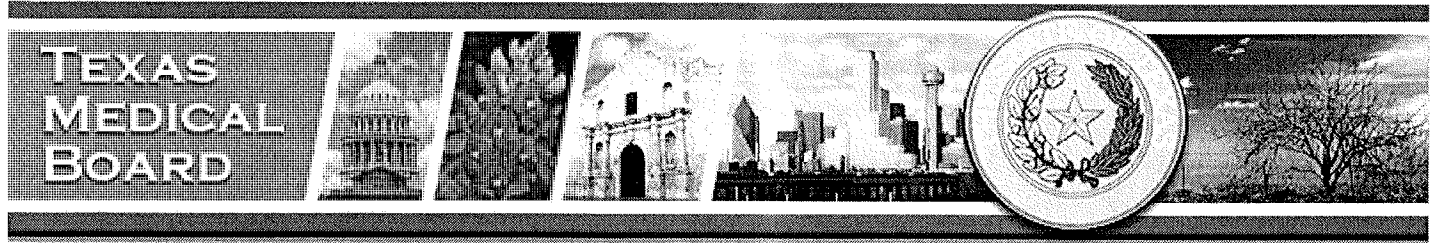
Prescriber:
Mary Talley Bowden, MD
Tx license: K9770
NPI: 1699858282

3600 Kirby Dr, Suite F
Houston, TX 77098
713-492-2340

713-206-8988 (cell)

Exhibit

2



PUBLIC VERIFICATION / PHYSICIAN PROFILE

PHYSICIAN

NAME: MARY TALLEY BOWDEN MD

DATE: 10/27/2021

THE INFORMATION IN THIS BOX HAS BEEN VERIFIED
BY THE TEXAS MEDICAL BOARD

Date of Birth: 1972

License Number: K9770 Full Medical License

Issuance Date: 05/19/2000

Expiration Date of Physician's Registration Permit: 08/31/2022

Registration Status: ACTIVE

Registration Date: 03/28/2017

Disciplinary Status: NONE

Disciplinary Date: NONE

Licensure Status: NONE

Licensure Date: NONE

Medical School of Graduation:

At the time of licensure, TMB verified the physician's graduation from medical school as follows:
MED COLL OF GEORGIA, AUGUSTA UNIV, GEORGIA

Medical School Graduation Year: 1998

TMB Filings, Actions and License Restrictions

The Texas Medical Board has the following board actions against this physician. (This may include any formal complaints filed by TMB, as well as petitions and/or responses related to licensure contested matters, at the State Office of Administrative Hearings.)

NONE

Investigations by TMB of Medical Malpractice

Section 164.201 of the Act requires that: the board review information relating to a physician against whom three or more malpractice claims have been reported within a five year period. Based on these reviews, the following investigations were conducted with the listed resolutions.

NONE

Status History

Status history contains entries for any updates to the individual's registration, licensure or disciplinary status types (beginning with 1/1/78, when the board's records were first automated). Entries are in reverse chronological order; new entries of each type supersede the previous entry of that same type. These records do not display status type. Should you have any questions, please contact our Customer Information Center at 512-305-7030 or verificic@tmb.state.tx.us

Status Code: AC
Description: ACTIVE

Effective Date: 03/28/2017

Status Code: DQ
Description: DELINQUENT-NON PAYMENT

Effective Date: 09/30/2016

Status Code: AC
Description: ACTIVE

Effective Date: 01/15/2015

Status Code: DQ
Description: DELINQUENT-NON PAYMENT

Effective Date: 09/30/2014

Status Code: AC
Description: ACTIVE

Effective Date: 09/04/2003

Status Code: TI
Description: TEXAS LICENSE ISSUED

Effective Date: 08/15/2003

Status Code: PR
Description: APPLIED FOR RELICENSURE

Effective Date: 03/31/2003

Status Code: CRB
Description: BOARD CANCELLED BY REQUEST

Effective Date: 09/07/2001

Status Code: IA
Description: INACTIVE-PRELIM TO BECOMING CN/CR

Effective Date: 08/31/2000

Status Code: DQ
Description: DELINQUENT-NON PAYMENT

Effective Date: 08/17/2000

Status Code: LI
Description: LICENSE ISSUED

Effective Date: 05/19/2000

THE INFORMATION IN THIS BOX WAS REPORTED BY THE LICENSEE AND
HAS NOT BEEN VERIFIED BY THE TEXAS MEDICAL BOARD

Gender: FEMALE
***Ethnicity:** WHITE

Race: WHITE

* We are in the process of transitioning from the current ethnic origin values to federal standards for race and Hispanic origin. The transition period will allow time for individuals to submit updated race and Hispanic origin data to the TMB.

Place of Birth: GEORGIA

Current Primary Practice Address:

2529 DEL MONTE DR
HOUSTON , TX 77019

Years of Active Practice in the U.S. or Canada:

The physician reports that he/she has actively practiced medicine in the United States or Canada for **11** year(s).

Years of Active Practice in Texas:

The physician reports that, of the above years he/she has actively practiced in the State of Texas for **8** year(s).

Specialty Board Certification

The physician reports that he/she holds the following specialty certifications issued by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists:

Specialty Certification: AMERICAN BOARD OF OTOLARYNGOLOGY

Date: 2004

Specialty Certification: AMERICAN BOARD OF OTOLARYNGOLOGY

Date: 2004

Primary Specialty

The physician reports his/her primary practice is in the area of OTOLARYNGOLOGY.

Secondary Specialty

The physician reports his/her secondary practice is in the area of SLEEP MEDICINE.

Name, Location and Graduation Date of All Medical Schools Attended

Name: MEDICAL COLLEGE OF GEORGIA

Location: AUGUSTA, GA

Graduation Date: 1998

Graduate Medical Education In The United States Or Canada

Program Name: UTMB

Location: GALVESTON, TX

Begin Date: 07/1999

Type: RESIDENCY

End Date: 06/2000

Specialty: OTOLARYNGOLOGY

Program Name: STANFORD UNIVERSITY

Location: PALO ALTO, CALIFORNIA

Begin Date: 07/2000

Type: RESIDENCY

End Date: 06/2003

Specialty: OTOLARYNGOLOGY

Program Name: UTMB

Location: GALVESTON, TX

Begin Date: 7/1998

Type: INTERNSHIP

End Date: 6/1999

Specialty: GENERAL SURGERY

Hospital Privileges

The physician reports that he/she has hospital privileges in the following in the State of Texas:

NONE

Utilization Review

The physician did not report whether he/she provides utilization review.

NONE REPORTED

Patient Services

Accessibility: The physician reports that the patient service area is accessible to persons with disabilities as defined by federal law.

Language Translation Services: The physician reports that the following language translation services are provided for patients: SPANISH

Medicaid Participant: The physician reports that he/she **does not** participate in the Medicaid program.

Awards, Honors, Publications and Academic Appointments

Optional Information

The physician may optionally report descriptions of up to five such honors and has reported the following:

Description: OTOLARYNGOLOGY AND FACIAL PLASTIC SURGERY PEARLS OF WISDOM, 2ND EDITION 2006 MCGRAW HILL PUBLISHING COMPANY

Description: OTOLARYNGOLOGY PEARLS OF WISDOM, 3RD EDITION 2011 MCGRAW HILL PUBLISHING COMPANY

Description: OTOLARYNGOLOGY PEARLS OF WISDOM, 2001, BOSTON MEDICAL

PUBLISHING (EDITION)

Description: ALPHA OMEGA ALPHA

Malpractice Information

Section 154.006(b)(16) of the Act requires that: a physician profile display a description of any medical malpractice claim against the physician, not including a description of any offers by the physician to settle the claim, for which the physician was found liable, a jury awarded monetary damages to the claimant, and the award has been determined to be final and not subject to further appeal. The physician has the following reportable claims.

Description: NONE

Criminal History

Self-Reported Criminal Offenses: The physician is required to report a description of (1) "any conviction for an offense constituting a felony, a Class A or Class B misdemeanor, or a Class C misdemeanor involving moral turpitude" and (2) "any charges reported to the board to which the physician has pleaded no contest, for which the physician is the subject of deferred adjudication or pretrial diversion, or in which sufficient facts of guilt were found and the matter was continued by a court of competent jurisdiction."

The physician has reported the following:

Description: NONE

Criminal history information is also obtained by TMB from the Texas Department of Public Safety. Resulting action, if any, will be reported under the TMB Action and Non-Disciplinary Restrictions section above.

Disciplinary Actions By Other State Medical Boards

The physician has reported the following:

Description: NONE

Physician Assistant Supervision

Description: NONE

Advanced Practice Nurse Delegation

To obtain
primary
source
verifications,
click name

To obtain

primary
source
verifications,
click name

Description: NONE

Summary of all License/Permit Types

Issue Date:

06/22/1998

05/19/2000

07/07/2003

Type:

INSTITUTIONAL PERMIT

LICENSED PHYSICIAN

PHYSICIAN TEMPORARY LICENSE

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Please contact Pre-Licensure, Registration and Consumer Services at (512) 305-7030 for assistance.

EXHIBIT 5

NO. 323-117290-21

ERIN JONES, INDIVIDUALLY AND
AS LEGAL REPRESENTATIVE AND
NEXT FRIEND OF JASON JONES
Plaintiff,

v

TEXAS HEALTH HUGHLEY, INC.,
d/b/a/ TEXAS HEALTH HUGHLEY
HOSPITAL FT. WORTH SOUTH;
DR. JASON A. SIEDEN;
JOHN DOES #1-5; JANE ROES #1-5;
Defendants

§

§

§

§

§

IN THE DISTRICT COURT

323RD JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

FILED
TARRANT COUNTY
2021 OCT 28 PM 4:19
THOMAS A. WILDER
DISTRICT CLERK

ORDER TO TRANSFER CASE

The Court, on its own motion, ORDERS that this matter is to be transferred to a District Court of Tarrant County, Texas with a preference for civil matters.

IT IS THEREFORE ORDERED that this suit is transferred to a District Court of Tarrant County, Texas with a preference for civil matters. On receipt of the of this order, the district clerk of this county is ORDERED to randomly assign a District Court with a preference for civil matters and file and docket the suit in the appropriate court with the appropriate cause number. The district clerk shall notify all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed.

The clerk of this Court is ordered to transmit immediately the entire contents of the court file.

The clerk of this Court is ordered to keep a copy of the transferred pleadings and documents.

SIGNED on October 28, 2021.


JUDGE PRESIDING

EXHIBIT 6

LOCAL RULES OF COURT

TARRANT COUNTY, TEXAS

Tarrant County Local Rules

Part 1. General Rules

Rule 1.01: Title, Scope, Authority and Application of Local Rules

(a) These rules are the Local Rules of Court of Tarrant County, Texas. They shall govern proceedings in the District Courts and Statutory County Courts of Tarrant County, Texas, for the purpose of securing uniformity and fairness in those proceedings and in order to promote justice.

(b) These rules are adopted by the trial judges of the district and county courts acting in Council pursuant to the inherent power of courts to control and guide the trial and disposition of causes, and pursuant to the provisions of the Supreme Court's order of September 13, 1999, as amended, adopting Rules of Judicial Administration and to the provision of the Court Administration Act, Sec. 74.093, Government Code, as amended.

(c) These rules are standing orders of all District and Statutory County Courts of this county, now existing or as may be created hereafter. Knowing or intentional violation of these rules may be punished by contempt or other sanction authorized by law or by rules of procedure as the trial judge may deem appropriate.

Rule 1.02: Parties Proceeding Pro Se

(a) Any natural person proceeding on his own behalf without an attorney shall be expected to read and follow these Local Rules and the Texas Rules of Civil Procedure, the Rules of Evidence, the Code of Criminal Procedure, and the Rules of Appellate Procedure as may be appropriate in the particular case. Failure to comply may be sanctioned, fined or punished as in other cases.

(b) All requirements of these rules applicable to attorneys or counsel apply with equal force to pro se litigants. Pro se litigants are required to provide address and telephone listings at which they can be reached by Court personnel and opposing counsel. Failure to accept delivery or to pick up mail addressed to the address provided by a pro se litigant will be considered constructive receipt of the mailed or delivered document and may be established by a postal service receipt for certified or registered mail or comparable proof of delivery. Wherever "counsel" is used it includes a party not represented by an attorney.

Rule 1.03: Assignment of Causes and Transfers

(a) Except as provided elsewhere in this Rule, cases will be filed by random selection in courts designated for the subject matter of the litigation.

(b) All juvenile matters shall be assigned to the court or courts designated to hear juvenile matters under Sec. 51.04, Family Code.

(c) All delinquent tax suits shall be assigned to the court designated by the Local Administrative Judge.

(d) Every suit or proceeding in the nature of a bill of review or otherwise, seeking to attack, avoid or set aside any judgment, order or decree shall be filed in and assigned to the Court in which such judgment, order or decree was rendered.

(e) Every ancillary garnishment shall be assigned to the Court in which the suit is pending to which the garnishment is ancillary. Garnishments after judgment shall be assigned to the court which rendered the judgment on which the garnishment is based.

(f) Cases may be transferred between District Courts and Statutory County Courts, subject to the jurisdictional limitations of the court to which they are transferred. Motions to transfer and to consolidate shall be filed in the earliest filed case. In suits under the Family Code where a Court is the court of continuing jurisdiction or court with mandatory or exclusive jurisdiction, such motions will be filed in that Court.

Rule 1.04: Jury and Non-Jury Weeks

(a) Jury and Non-Jury weeks for all of the trial courts for any calendar year shall be designated by order not later than the second Friday in October of the preceding calendar year.

(b) Non-jury matters may be set and tried in jury weeks subject to the jury docket. With the concurrence of the Local Administrative Judge, any one case requiring a particularly large jury panel may be specially set by the court in a non-jury week and a special venire summoned for that case alone.

Rule 1.05: Bankruptcy

(a) Notice of Filing

(1) Whenever any party of litigation in these courts files for protection under the bankruptcy laws of the United States, it shall be the responsibility of that party's counsel in these courts: (i) to promptly notify the affected court(s) by immediately telephoning the Court Coordinator; and (ii) within three (3) days of any bankruptcy filing, to provide written notice to the affected court(s) and all counsel that a bankruptcy has occurred giving the name and location of the bankruptcy court, the bankruptcy cause number and style, the date of filing and the name and address of counsel for the bankrupt.

(2) Compliance with this rule will enable the Courts to pass over cases

affected by bankruptcy and to try other cases on the docket.

(3) Failure to comply with this rule may be punished by sanctioning counsel and, in appropriate cases, the party once the bankruptcy is concluded.

(b) Conclusion of Bankruptcy

Once a bankruptcy has been concluded, whether by discharge, denial of discharge, dismissal or otherwise, counsel shall promptly notify the Court Coordinator so that the affected cases may be restored to the active docket or be dismissed as may be appropriate.

Rule 1.06: Filing Papers

(a) All pleadings, motions, notices, and any other paper, document or thing made a part of the record in any civil, family law or criminal case shall be filed with the Clerk.

(b) All briefs, proposed orders and judgments shall be presented to the Court Coordinator.

(c) On dates on which county offices will be closed other than weekends and holidays, the Clerks will designate a location within the courthouse complex where papers may be filed.

(d) All filed motions seeking affirmative relief from the court will either be accompanied by an Order in such form as to grant or deny the motion, or said Order will be brought to the hearing on the motion.

Rule 1.07: Filing Responses to Discovery

(a) The following discovery responses and related material SHALL be served upon all other lead counsel or parties and filed with the Clerk in accordance with the Texas Rules of Civil Procedure and the Texas Civil Practice and Remedies Code; those denoted [OPTIONAL] SHALL be served, and MAY be filed, accordingly:

(1) Texas Rules of Civil Procedure:

1. Rule 194. Requests for Disclosure and Non-Documentary Responses [194.2(a), (b), (c), (d), (e), and (f)1, 2, and 3]

2. Rule 196.

Responses and Objections to Requests for Production [The responsive documents produced therewith are NOT to be filed. See 1.07(b) (1)].

3. Rule 197.
Answers and Objections to Interrogatories to Parties.
4. Rule 198.
Answers and Objections to Requests for Admission.
5. Rule 199.
Notices of Deposition. [OPTIONAL]
6. Rule 176, 199.
Subpoena and Subpoena Duces Tecum. [OPTIONAL]
7. Rule 200.
Notices of Deposition by Written Question. [OPTIONAL]

(2) Texas Rules of Evidence:

1. Rule 902(10).
Affidavit in connection with "Business Records Accompanied by Affidavit" [The documents accompanying the Affidavit are NOT to be filed. See 1.07(b) (2)].

(3) Texas Civil Practices and Remedies Code:

1. Sec. 18.001.
Affidavit in connection with "Affidavit Concerning Cost and Necessity of Services." [Documents attached to the Affidavit are NOT to be filed. See 1.07(b) (3)].

(b) The following discovery documents and related materials SHALL be served upon all other lead counsel or parties in accordance with the Texas Rules of Civil Procedure and the Texas Civil Practice and Remedies Code, but SHALL NOT BE FILED with the clerk except on Special Order.

(1) Texas Rules of Civil Procedure:

1. Rule 194 Documentary responses to Request for Disclosure [Rule 194.2 (f)(4), (g), (h), (i), (j), and (k)]
2. Rule 196.
Documents or tangible items produced in connection with Requests for Production.

3. Rule 199.
Depositions.

4. Rule 199.
Documents produced pursuant to a Subpoena Duces Tecum.

5. Rule 200. .
Documents obtained by Deposition by Written Questions.

(2) Texas Rules of Evidence:

1. Rule 902(10).
“Business Records Accompanied by Affidavit.” Documents accompanying these Affidavits are NOT to be filed.

(3) Texas Civil Practices and Remedies Code:

1. Sec. 18.001.
“Affidavit Concerning Cost and Necessity of Services.” Documents accompanying the Affidavit are NOT to be filed.

(c) The party responding to discovery requests, or the party initiating discovery to a non-party, has the following additional responsibilities:

(1) Serve upon all other lead counsel or parties, discovery material listed in Rule 1.07 (b) as required therein; but the same shall NOT be filed with the Clerk except on Special Order.

(2) Retain the original or exact copy of the discovery responses and related material listed in Rule 1.07 (b) while the case and any related appellate proceedings are pending and for one year thereafter, and sign and file a Certificate of Written Discovery with the clerk when necessary.

(3) Sign and file A Certificate entitled “Certificate of Written Discovery” with the Clerk whenever discovery materials listed in Rule 1.07 (b) are retained and/or sent to another party. The certificate may list more than one document. The certificate shall identify:

1. the document containing the discovery material,
2. counsel or parties to whom the document is sent, and
3. the date the discovery response or related matter is served on other counsel or parties.

(d) Related matters:

(1) MOTIONS INVOLVING DISCOVERY DISPUTES.

If relief is sought concerning any discovery dispute, a party may file copies of only those portions of the material related to the dispute, without obtaining a Special Order.

(2) SUMMARY JUDGMENT AND OTHER PRE-TRIAL MOTIONS.

A party may file discovery and related material in support of a motion for summary judgment, or for any response or reply to such a motion, or for any other pretrial motion, response, or reply, without obtaining a Special Order. Only the portions of a deposition related to the motion, response, reply or other pre-trial matter may be filed without a Special Order.

(3) APPEAL OR OTHER POST-JUDGMENT PURPOSES.

A party may file discovery materials not previously on file for use on appeal or for other post-judgment purposes, without a Special Order.

(4) COURT REPORTER'S CERTIFICATE.

Nothing in this rule shall alter the requirement for filing the court reporter's certificate required by Rule 203, Texas Rules of Civil Procedure.

(5) Rule 621a. RESPONSES, ANSWERS AND OBJECTIONS TO "DISCOVERY AND ENFORCEMENT OF JUDGMENT." The discovery device used pursuant to this rule shall be governed by the Supplemental Tarrant County Local Rules applicable to that particular discovery device.

(e) Special Order:

Documents listed in (b) of this Rule may not be filed by agreement and shall be filed only after obtaining a Special Order, following a hearing on Motion for Special Order showing good cause therefore.

Rules 1.08 through 1.09-Reserved

Rule 1.10: Resolution of Conflicting Settings

(a) Where an attorney has settings in two or more courts which conflict preference shall be as follows:

(1) Trials on the merits in any court take precedence over hearings, motions and other temporary matters in any other court;

(2) All proceedings in any court take precedence over depositions and other out of court discovery activities; and

(3) All other conflicts in trial settings shall be resolved as provided in the Rules of the Eighth Administrative Judicial Region, Rule 10. (see Appendix)

(b) For the purpose of this rule, settings in the District Courts or Bankruptcy Courts of the United States or in the general jurisdiction trial court of any sister State will be treated as settings in a district court of Tarrant County.

(c) Any attorney having a previously scheduled oral argument in any appellate court shall be given a reasonable time to travel to and from that court and make argument provided the attorney advises the trial judge of the scheduled argument before the commencement of trial.

Rule 1.11: Vacations of Attorneys

If a case is set for trial by the court on a date for which an attorney has planned a vacation, the attorney will notify the Court as soon as the notice of trial setting is received and the case may be reset for a different time at the discretion of the court. If plans for a vacation are made by an attorney after a trial setting notice has been received, the attorney will immediately notify the Court and other parties with a request that the case be reset for a different time. The Court will rule on such request after giving all parties to the lawsuit an opportunity to respond to the request.

Rule 1.12: Judicial Absences

Whenever a judge anticipates an absence of more than five (5) court days due to vacation, illness, national service, attendance at legal education courses, attendance to the meetings of judicial or bar committees, or otherwise, then that judge shall so inform the Presiding Judge of the Eighth Administrative Region so that another judge may be assigned to the court.

Rule 1.13 through 1.98-Reserved

Rule 1.99: Repeal and Effective Date

(a) All prior Local Rules are repealed as of the effective date of these rules.

(b) These rules are effective January 1, 1999, or at such later date as they may be approved by the Supreme Court. They shall govern all proceedings occurring on or after their effective date.

Part 2. _____

Rules 2.01 to 2.99-Reserved

Part 3. Rules for Disposition of Civil Cases